

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #12	CCRB Case #: 201606580	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/30/2016 2:00 AM	Location of Incident: In front of 542 Gates Avenue	Precinct: 79	18 Mo. SOL 1/30/2018	EO SOL 1/30/2018	
Date/Time CV Reported Mon, 08/01/2016 2:48 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/01/2016 2:48 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA Robert Barnett	00157	918730	SRG
2. POM Declan Ludington	14327	953018	SRG
3. POM Steven Lopez	11248	938880	SRG
4. POM Garth Merandy	05287	949326	SRG
5. POM Yurantz Assade	14020	939886	SRG

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Jeremy Veit	02516	935920	SRG

Officer(s)	Allegation	Investigator Recommendation
A.SSA Robert Barnett	Abuse: Sergeant Robert Barnett stopped § 87(2)(b)	
B.POM Declan Ludington	Abuse: Police Officer Declan Ludington stopped § 87(2)(b)	
C.POM Declan Ludington	Abuse: Police Officer Declan Ludington frisked § 87(2)(b)	
D.POM Declan Ludington	Force: Police Officer Declan Ludington used physical force against § 87(2)(b)	
E.SSA Robert Barnett	Force: Sergeant Robert Barnett used physical force against § 87(2)(b)	
F.POM Yurantz Assade	Force: Police Officer Yurantz Assade used physical force against § 87(2)(b)	
G.POM Steven Lopez	Abuse: Police Officer Steven Lopez refused to provide his shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on August 1, 2016.

On July 30, 2016, at approximately 2:00 AM, § 87(2)(b) and a group of between ten and twenty other individuals were standing outside of 542 Gates Avenue in Brooklyn. § 87(2)(b) and the other members of the group were drinking Hennessy and smoking marijuana. Detective Jeremy Veit, Sergeant Robert Barnett, and Police Officer Declan Ludington, all of the Strategic Response Group City Wide Crime Team drove by 542 Gates Avenue, and stopped to observe the group. § 87(2)(b) walked away from the group. PO Ludington exited the police vehicle and frisked § 87(2)(b) (**Allegation A, Allegation B**). PO Ludington told § 87(2)(b) that he could leave, and § 87(2)(b) began walking down the block towards Tompkins Avenue. Shortly after, PO Ludington drove down Gates Avenue towards § 87(2)(b) and stopped him again. Sgt. Barnett and Police Officer Yurintz Assade arrived shortly after. § 87(2)(b) put his arms over his head and asked why he was being arrested. PO Ludington, Sgt. Barnett, and PO Assade allegedly pushed § 87(2)(b) to the ground (**Allegation C, Allegation D, Allegation E**) and an officer handcuffed him.

Police Officer's Steven Lopez and Garth Merandy arrived at the location. PO Lopez and an unidentified other officer approached § 87(2)(b) and other onlookers and told them to back up. Video shows § 87(2)(b) ask PO Lopez for his "badge number," and PO Lopez responding, "You ain't getting that" (**Allegation F**).

PO Merandy (**Allegation G**) and PO Assade (**Allegation H**) did not make entries in their respective memo books documenting their presence at the location.

This case is being submitted after the 90-day mark because of difficulty in scheduling officer appearances.

§ 87(2)(b)

§ 87(2)(b) provided a § 87(2)(b) link to a video of this incident (**02 Board Review**). The video shows a portion of § 87(2)(b) arrest, and the FADO allegation of refusing to provide name and shield number.



Snag It.mp4

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(c), § 87(2)(b) (**11 Board Review**).
- On December 22, 2016, a Notice of Claim Inquiry returned negative results from the NYC Comptroller's Office (**24 Board Review**).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**20 Board Review**).
- This is the first CCRB complaint to which § 87(2)(b) has been party (**19 Board Review**).
- PO Ludington has been a member of service for four years and has ten previous allegations. PO Ludington has one substantiation in regards to CCRB Case No. 201310095 for offensive language (race). The CCRB recommended instructions, and the NYPD imposed instructions.
- Sgt. Barnett has been a member of service for nineteen years and has seventeen previous allegations. Sgt. Barnett has one substantiation in regards to CCRB Case No. 201015749 for premises entered and searched. The CCRB recommended charges, and Sgt. Barnett was given instructions.
- PO Lopez has been a member of service for eleven years and has ten previous allegations with no substantiations. PO Lopez has one previous refusal to provide name and shield allegation.
- PO Assade has been a member of service for ten years and has fifteen previous allegations, with three substantiations. In CCRB Case No. 20095169, the CCRB had no recommendations for a substantiated allegation of a vehicle search, and the NYPD imposed instructions. In regards to CCRB Case No. 201600040, the CCRB substantiated two allegations of a vehicle search and frisk. The CCRB recommended command discipline, and the NYPD disposition is pending.

Potential Issues

§ 87(2)(b) was unavailable to the investigation (**23 Board Review**). Video containing portions of this incident, including the refusal to provide name and shield number allegation, was uploaded to § 87(2)(b) Facebook page.

Findings and Recommendations

Explanation of Subject Officer Identification

- PO Assade did not recall this incident. PO Assade was shown the cell phone video depicting the arrest of § 87(2)(b) (**02 Board Review**) and identified himself as one of the officers participating in affecting the arrest of § 87(2)(b) (**09 Board Review**).

Allegations not pleaded

- **Abuse of Authority:** § 87(2)(b) alleged that he was frisked an additional time at the point of his arrest. This alleged frisk was incident to a lawful arrest, and thus an additional allegation of a frisk has not been pled.

Allegation A- Abuse of Authority: Sergeant Robert Barnett stopped § 87(2)(b)

Allegation B –Abuse of Authority: Police Officer Declan Ludington stopped § 87(2)(b)

It is undisputed that § 87(2)(b) was standing with a large group of people outside of 542 Gates Avenue, smoking marijuana and drinking alcohol. It is further undisputed that § 87(2)(b) began walking in the middle of the street.

§ 87(2)(b) stated that he was standing outside of 542 Gates Avenue with a large crowd of between ten and twenty individuals. § 87(2)(b) and the other members of the group were drinking Hennessy and smoking marijuana. § 87(2)(b) saw two women across the street from 542 Gates Avenue, and began to cross the street at mid block to talk to them. § 87(2)(b) had not observed any police vehicles at this point. As § 87(2)(b) was crossing the street, PO Ludington exited an unmarked black vehicle, and stopped § 87(2)(b) **(01 Board Review)**.

Sgt. Barnett stated that while on patrol with Det. Veit and PO Ludington, he observed a large crowd of between twenty and thirty people in front of 542 Gates Avenue. Sgt. Barnett could smell the scent of burnt marijuana, and heard loud music playing. As Sgt. Barnett pulled up to the group, the group became quieter and stood still. Sgt. Barnett first observed § 87(2)(b) because § 87(2)(b) walked away from the group, and began walking down Gates Avenue in the direction of Tompkins Avenue. Sgt. Barnett was the operator of the police vehicle and began backing the vehicle down Gates Avenue, after § 87(2)(b). When § 87(2)(b) saw Sgt. Barnett following him, he reversed course and began walking back towards 542 Gates Avenue. § 87(2)(b) approached a car that was parked in the area of 542 Gates Avenue, and leaned down towards it. As § 87(2)(b) leaned down towards the car, the loud music that was playing stopped. Sgt. Barnett did not observe § 87(2)(b) enter the car, and did not suspect him or having deposited anything in to the car. After § 87(2)(b) leaned in towards the car, he approached the police vehicle and put his hands over his head and said that if the officers wanted to search him, they could. Sgt. Barnett then instructed PO Ludington to exit the police vehicle and speak to § 87(2)(b). § 87(2)(b) Sgt. Barnett did not provide PO Ludington with any further information and instructions **(06 Board Review)**.

PO Ludington stated that he, along with Sgt. Barnett and Det. Veit, were conducting routine patrol in the area surrounding 542 Gates Avenue. A large crowd of people were congregated in front of 542 Gates Avenue, and PO Ludington could smell marijuana being smoked, observed people in the large group drinking what he perceived to be alcohol, and heard loud music being played. The majority of the group was standing on the passenger side of the police vehicle, and a smaller group was standing behind the police vehicle. PO Ludington was observing the group behind the police vehicle when Sgt. Barnett instructed him to exit the police vehicle and see what was going on with an individual, later identified as § 87(2)(b). When PO Ludington saw § 87(2)(b) was standing with his hands over his head and was telling PO Ludington to search and “check” him. PO Ludington identified himself as a police officer and told § 87(2)(b) to “relax.” § 87(2)(b) continued to tell PO Ludington to check him, and PO Ludington patted down § 87(2)(b) outer pant pockets (See Allegation B) **(05 Board Review)**.

People v. De Bour, 40 N.Y.2d 201 (1976) allows officers to stop individuals whom they reasonably suspect are engaging in, have engaged in, or are about to engage in acts of criminality **(25 Board Review)**.

§ 87(2)(g)
§ 87(2)(g)
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§ 87(2)(g)

Allegation C- Abuse of Authority: Police Officer Declan Ludington frisked § 87(2)(b)

It is not in dispute that PO Ludington frisked § 87(2)(b) and it is also not in dispute that § 87(2)(b) had been drinking alcohol and smoking marijuana. It is disputed whether § 87(2)(b) freely and repeatedly gave PO Ludington consent to search him.

§ 87(2)(b) stated that immediately after PO Ludington stopped him, that PO Ludington frisked his front pant pockets, down his legs, chest, and waistband. After frisking him, PO Ludington said, “Get out of here.” § 87(2)(b) then continued walking down Gates Avenue towards Tompkins Avenue (**01 Board Review**).

PO Ludington stated that immediately upon exiting the police vehicle to approach § 87(2)(b) was standing with his hands over his head, telling PO Ludington to search him. PO Ludington told § 87(2)(b) to “relax,” and § 87(2)(b) persisted in telling PO Ludington to check him. § 87(2)(b) appeared nervous, because he was looking around while he was speaking to PO Ludington, had his hands up, and was speaking quickly. Because § 87(2)(b) appeared nervous, and repeatedly told PO Ludington to search him, PO Ludington patted down § 87(2)(b) outer pants pockets. After patting down § 87(2)(b) outer pants pockets, PO Ludington told § 87(2)(b) to have a good night, and turned back around to speak to Sgt. Barnett (**05 Board Review**).

Since PO Ludington was looking behind the vehicle at the smaller group of people, he did not know of § 87(2)(b) presence until Sgt. Barnett instructed him to exit the vehicle and speak with him. PO Ludington did not suspect § 87(2)(b) of having a weapon on him.

Sgt. Barnett (**06 Board Review**) and Det. Veit (**04 Board Review**) did not observe PO Ludington frisk § 87(2)(b) because after PO Ludington exited the police vehicle, they also exited, and approached the parked car they had observed § 87(2)(b) lean in towards. Sgt. Barnett and Det. Veit both stated that prior to PO Ludington exiting the vehicle to engage § 87(2)(b) that § 87(2)(b) had approached the police vehicle with his hands over his head and was telling the officers to search him.

PO Ludington, Det. Veit, and Sgt. Barnett stated that § 87(2)(b) approached the car with his hands over his head telling the officers to search him. § 87(2)(b) stated that while innocuously crossing the street, he was stopped and immediately frisked by PO Ludington.

§ 87(2)(g)

Allegation D –Force: Police Officer Declan Ludington used physical force against § 87(2)(b)

Allegation E –Force: Sergeant Robert Barnett used physical force against § 87(2)(b)

Allegation F –Force: Police Officer Yurantz Assade used physical force against § 87(2)(b)

§ 87(2)(b) stated that after PO Ludington frisked him and told him to go, he continued walking down Gates Avenue towards Tompkins Avenue. PO Ludington drove up to him in a black unmarked vehicle and told him to “come here.” PO Ludington exited the vehicle and § 87(2)(b) walked up to him. PO Ludington grabbed § 87(2)(b) shirt and pulled him towards him. § 87(2)(b) asked PO Ludington why he was pulling him towards him, since he was being compliant. PO Ludington let go of § 87(2)(b) shirt and told § 87(2)(b) to wait for his partners to arrive. Other officers subsequently arrived, including Sgt. Barnett and PO Assade. Sgt. Barnett and PO Ludington began trying to put § 87(2)(b) arms behind his back. § 87(2)(b) raised his arms over his head and asked why he was being arrested. § 87(2)(b) did not make any other movements to keep the officers from handcuffing him. While PO Ludington, Sgt. Barnett, and PO Assade were trying to get § 87(2)(b) arms behind his back, the officers picked § 87(2)(b) arms up and “swung” him to the ground. Once on the ground, § 87(2)(b) was handcuffed. § 87(2)(b) repeatedly asked the officers why he was being arrested, and was not given an answer **(01 Board Review)**.

PO Ludington stated that after he frisked § 87(2)(b) he turned to speak to Sgt. Barnett, and Sgt. Barnett told him to go get § 87(2)(b). PO Ludington got back in to the police vehicle to go find § 87(2)(b) and apprehend him. PO Ludington saw § 87(2)(b) at the end of the block, and exited the vehicle to approach him. PO Ludington did not want to attempt to handcuff § 87(2)(b) alone, and went over the radio to ask for additional units. PO Ludington attempted to engage § 87(2)(b) and keep him calm until the additional units arrived. § 87(2)(b) began getting agitated, and asked PO Ludington why he was stopping him again. A civilian approached PO Ludington and § 87(2)(b) and told § 87(2)(b) to calm down and let the police do what they needed to do. Sgt. Barnett was the first backup officer to arrive. PO Ludington and Sgt. Barnett attempted to put § 87(2)(b) arms behind his back, but § 87(2)(b) began flailing his arms and moving his feet around, preventing the officers from handcuffing him. § 87(2)(b) then began to “push through” PO Ludington and Sgt. Barnett. § 87(2)(b) is taller than both PO Ludington and Sgt. Barnett, and as a result of his resistance, PO Ludington, Sgt. Barnett, and § 87(2)(b) all fell to the ground. PO Ludington handcuffed § 87(2)(b) once he was on the ground. When PO Ludington fell to the ground, he saw that other officers had arrived at the location, and were attempting to help handcuff § 87(2)(b). PO Ludington did not recall who the additional officers were **(05 Board Review)**.

Sgt. Barnett stated that after PO Ludington exited the vehicle, he and Det. Veit approached the crowd and a parked car that they had observed § 87(2)(b) approach. When § 87(2)(b) approached the parked car, he leaned down towards it. Loud music had been playing from the car, and when § 87(2)(b) leaned down, the music turned off. Sgt. Barnett did not see how § 87(2)(b) turned the music off, did not see § 87(2)(b) enter or exit the car, or otherwise see § 87(2)(b) make contact with the car. Det. Veit approached the car and observed a firearm on the front passenger seat. Sgt. Barnett then instructed PO Ludington to apprehend § 87(2)(b). Shortly thereafter, PO Ludington requested additional units, and Sgt. Barnett ran down the block to assist him. Sgt. Barnett looked at PO Ludington and said “lunch,” which is the team’s code word for firearm. Sgt. Barnett also said “92,” signaling to PO Ludington that they were going to arrest § 87(2)(b). Sgt. Barnett attempted to put § 87(2)(b) left arm behind his back, and PO Ludington

tried to place his right arm behind his back. § 87(2)(b) flailed his arms and prevented the officers from handcuffing him. Additional units responded and assisted in trying to handcuff § 87(2)(b) but Sgt. Barnett did not know who the officers were. Sgt. Barnett, PO Ludington and § 87(2)(b) all fell to the ground, because § 87(2)(b) was flailing his arms and “tossed” the officers. Sgt. Barnett landed on his back on the ground, and § 87(2)(b) fell on top of him. PO Ludington handcuffed § 87(2)(b) **(06 Board Review)**.

PO Assade did not recall participating in the arrest of § 87(2)(b) and did not remember this incident as a whole. PO Assade was shown cell phone video of this incident and identified himself as an officer pictured assisting in handcuffing § 87(2)(b). PO Assade did not recall how § 87(2)(b) came to be on the ground, or what actions he took to assist in the arrest (09 Board Review).

The cell phone video begins after § 87(2)(b) is already on the ground, and shows Sgt. Barnett under § 87(2)(b) **(02 Board Review)**.

According to Patrol Guide Procedure 221-02, an officer may apply no more than the reasonable force necessary to gain control of an arrestee (**22 Board Review**).

§ 87(2)(g)

Allegation G-Abuse of Authority: Police Officer Steven Lopez refused to provide his shield number to § 87(2)(b)

PO Lopez stated that he did not hear any civilian ask him for his name and shield number, and did not otherwise refuse to provide the information to any civilian (**08 Board Review**).

PO Lopez was shown cell phone video of this incident.

At the 00:48 mark § 87(2)(b) asks, "Can I get a badge number please? Can I get a badge number?" At 00:49 PO Lopez is pictured looking at the camera and walking towards the camera. At 00:52 PO Lopez says, "You ain't getting that" (**02 Board Review**).

After viewing the video, PO Lopez did not recall hearing § 87(2)(b) ask him for his “badge number” (08 Board Review).

Patrol Guide Procedure 203-09 states that officers must “courteously provide [their] rank, name, shield number, and command, or otherwise provide them, to anyone who requests you to do so. Allow the person ample time to note this information (**25 Board Review**).

§ 87(2)(g) [Redacted]
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§ 87(2)(g), § 87(4-b) [Redacted]
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[Redacted].

Squad: 12

Investigator: _____
Signature Print Date

Squad Leader: _____
Signature Title/Print Date